

[2025] PBRA 28**Application for Reconsideration by the Secretary of State
in the case of Sultan****Application**

1. This is an application by the Secretary of State (the Applicant) for reconsideration of a decision of a panel of the parole board dated 27 December 2024 directing the release of Sultan (the Respondent) following an oral hearing on 29 November 2024.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2024) (the Parole Board Rules) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These are the decision, the application for reconsideration and the dossier.

Request for Reconsideration

4. The application for reconsideration is dated 21 January 2025.
5. The grounds for seeking a reconsideration are that the decision to release was irrational for the following reasons:
 - (i) The panel overly and inappropriately relied on the Respondent's self-report in deciding that the test for release was met.
 - (ii) The panel did not sufficiently challenge or explore in depth the evidence of the professional witnesses.
 - (iii) The panel have failed to give adequate reasons for their decision to release.

Background

6. The Respondent has three separate convictions relating to the systematic sexual abuse of young girls in Telford by Pakistani men between 2001 and 2009. In November 2012 he was sentenced to an extended determinate sentence of 7 years imprisonment for controlling a girl as a child prostitute and sexual activity with a child. In April 2015 he was sentenced to an extended determinate sentence of 11 years imprisonment for the rape and attempted rape of a girl. Although the Respondent denied these offences at trial, he has subsequently admitted them. On



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19 December 2019 the Respondent was sentenced to a total extended determinate sentence of 10 years imprisonment for offences of rape and indecent assault. The custodial period was 8 years with an extension period of 2 years. The Respondent denied these offences at trial and continues to deny them. Although they are the subject of the last conviction, these offences were the earliest in time being committed in 2001 or 2002 when the Respondent was 15 or 16. While serving his sentence, the Respondent has admitted committing many similar offences over the period 2007 to 2009.

Current parole review

7. The case was referred to the Parole Board on 12 September 2023. There were a number of adjournments of the case before it was finally heard on 29 November 2024.
8. On 29 November 2024 the panel consisted of a judicial member, a psychologist and an independent member. The panel heard evidence from a psychologist instructed by HMPPS, the Community Offender Manager (COM), the Prison Offender Manager (POM) and the Respondent.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 27 December 2024 the test for release.

Parole Board Rules 2019 (as amended)

10. Rule 28(1) of the Parole Board Rules provides the types of decision which are eligible for reconsideration. Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for reconsideration whether made by a paper panel (rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (rule 25(1)) or by an oral hearing panel which makes the decision on the papers (rule 21(7)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (rule 31(6) or rule 31(6A)).
11. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (rule 28(2)(a)), extended sentences (rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (rule 28(2)(c)) and serious terrorism sentences (rule 28(2)(d)).

Irrationality

12. The power of the courts to interfere with a decision of a competent tribunal on the ground of irrationality was defined in *Associated Provincial Houses Ltd -v- Wednesbury Corporation* 1948 1 KB 223 by Lord Greene in these words “*if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere*”. The same test applies to a reconsideration panel when determining an application on the basis of irrationality.



13. In R(DSD and others) -v- the Parole Board 2018 EWHC 694 (Admin) a Divisional Court applied this test to parole board hearings in these words at para 116 *"the issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."*
14. In R(on the application of Wells) -v- Parole Board 2019 EWHC 2710 (Admin) Saini J. set out what he described as a more nuanced approach in modern public law which was *"to test the decision maker's ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due deference and with regard to the panel's expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied"*. This test was adopted by a Divisional Court in the case of R(on the application of the Secretary of State for Justice) -v- the Parole Board 2022 EWHC 1282(Admin).
15. As was made clear by Saini J this is not a different test to the Wednesbury test. The interpretation of and application of the Wednesbury test in Parole hearings as explained in DSD was binding on Saini J.
16. It follows from those principles that in considering an application for reconsideration the reconsideration panel will not substitute its view of the evidence for that of the panel who heard the witnesses.
17. Further while the views of the professional witnesses must be properly considered by a panel deciding on release, the panel is not bound to accept their assessment. The panel must however make clear in its reasons why it is disagreeing with the assessment of the witnesses.
18. The Applicant refers to other cases as to the meaning of irrationality in his application and I have considered them in so far as they add to the leading cases referred to above.

The reply on behalf of the Respondent

19. No representations have been made by the Respondent. Unless the Respondent has dispensed with the services of his legal representative, it would be extremely helpful if in cases like this a response to the application was submitted. The Respondent's legal representative was at the hearing and could have provided me with useful submissions.

Discussion

- 20.(i) **The panel overly and inappropriately relied on the Respondent's self report.** It is for the panel who heard the evidence to decide what evidence they accept and the weight they place on it. The panel saw and heard the witnesses. The panel decided that there was significant evidence of change and the professional witnesses' evidence supported that view. There is no evidential support provided by the Applicant for this ground for reconsideration and it is without foundation. The panel included an experienced Judge and the whole panel would have been well aware of the ability of some prisoners to give evidence which is deceptive. The only



basis for this submission is that the Appellant does not agree with the decision made by the panel. That is not a ground for reconsideration.

(ii) **The panel did not sufficiently challenge or explore in depth the evidence of the professional witnesses.** Again, there is no evidential basis for this submission provided by the Applicant. There is no transcript of the proceedings nor is one required. There is no statement from any of the professionals employed by the MOJ who were at the hearing to support the suggestion that there was inadequate questioning. There was a psychologist on the panel whose function would be to test and evaluate the psychological risk assessment. If the panel accepts the evidence having read the reports and the supporting documentation, they do not have to ask a great number of questions, it is for the panel to decide how much challenge or exploration is required.

(iii) **The panel have failed to give adequate reasons for their decision to release.** I do not agree. The panel set out perfectly clearly the reasons for their decision. While the POM and the COM had originally recommended that the Respondent should spend some time in open conditions before being released; in evidence they both accepted that with a comprehensive risk management plan the Respondent's risk could be managed in the community. The psychologist considered a period in open conditions to be unnecessary and that the necessary lessons had been learnt by the Respondent. While the Applicant suggests that there had been insufficient core learning carried out by the Respondent to meet the test for release, that was not the evidence before the panel. The Applicant stresses the fact that the Respondent had denied the index offences and still denied them. While that might be an important factor in an appropriate case, the Respondent admitted not only other similar behaviour that he had been convicted of but also other similar behaviour that he had not been convicted of. That means that he was admitting the sort of conduct which led to the index convictions and that he could attend appropriate courses to reduce his risk.

21. In my judgment this is a hopeless application for reconsideration which was bound to fail. The Applicant would have seen all the documentation in this case before it went to the Board. She could have decided, if she was concerned about the reports submitted by professionals employed by her, to make representations to be considered by the panel or be represented so that her advocate could ask the questions that she now considers should have been asked by the panel.

Decision

22. For the reasons I have given, I do not consider that the decision was irrational and accordingly the application for reconsideration is refused.

John Saunders
5 February 2025



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